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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0085]

RIN 0579-AE04

Importation of Fresh Andean Blackberry and Raspberry Fruit From Ecuador Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of fresh Andean blackberry and raspberry fruit from Ecuador into the continental United States. As a condition of entry, the fruit will have to be produced in accordance with a systems approach that includes requirements for importation in commercial consignments from a pest free production site within a certified low pest prevalence area for fruit flies, and pest monitoring and trapping. The fruit will also have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Ecuador bearing an additional declaration stating that the consignment was produced and prepared for export in accordance with the requirements of the systems approach. This action will allow for the importation of fresh Andean blackberry and raspberry fruit from Ecuador while continuing to provide protection against the introduction of quarantine pests into the continental United States.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations and Manuals, PPQ, APHIS, (301) 851-2352; e-mail: Claudia.Ferguson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-74, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On April 24, 2015, we published in the Federal Register (80 FR 22927-22930, Docket No. APHIS-2014-0085) a proposal¹ to amend the regulations to allow importation of Andean blackberry (Rubus glaucus Benth) and raspberry (Rubus idaeus Linnaeus) fruit into the continental United States from Ecuador subject to a systems approach. We also prepared a pest risk assessment (PRA) and a risk management document (RMD). The PRA evaluates the risks associated with the importation of fresh Andean blackberry and raspberry fruit from Ecuador into the continental United States. The RMD draws upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the continental United States of fresh Andean blackberry and raspberry fruit from Ecuador.

In the proposed rule, we noted that the PRA rated three plant pests as having a high pest risk potential for following the pathway of fresh Andean blackberry and raspberry fruit from

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0085>.

Ecuador into the continental United States: Anastrepha fraterculus (South American fruit fly), Ceratitis capitata (Mediterranean fruit fly, or Medfly), and Copitarsia decolora, a moth.

We determined in the PRA that measures beyond standard port of arrival inspection will adequately mitigate the risks posed by these plant pests and proposed a systems approach that includes requirements for importation in commercial consignments from a pest free production site within a certified low pest prevalence area for fruit flies, pest monitoring, and pest trapping. We also proposed that the fruit be imported in commercial consignments only and accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Ecuador stating that the consignment was produced and prepared for export in accordance with the systems approach.

We solicited comments concerning our proposal for 60 days ending June 23, 2015. We received five comments during the comment period from members of the public and an employee of a foreign NPPO. The comments are discussed below.

General Comments

Two commenters stated that the importation of fresh Andean blackberry and raspberry fruit into the continental United States should not be allowed due to the associated plant pest risk. One of these commenters added that production of blackberry and raspberry fruit in the United States, along with existing import agreements with other countries, renders importation of Andean blackberry and raspberry fruit from Ecuador unnecessary.

We are making no changes in response to these comments. Under the Plant Protection Act (7 U.S.C. 7701 et seq.), we have the authority to prohibit or restrict the importation of plants and plant products only when necessary to prevent the introduction into, or dissemination of plant pests or noxious weeds within, the United States. We have determined that fresh Andean

blackberry and raspberry fruit from Ecuador may be safely imported into the continental United States under the conditions we are adding to the regulations.

Mitigations for Medfly

One commenter stated that while the PRA lists Medfly as having a high pest risk potential for following the pathway of Andean blackberries and raspberries imported into the continental United States from Ecuador, the production site requirements we propose do not require mitigation for Medfly beyond standard commercial production and inspection. The commenter requested that we include an additional mitigation measure for Medfly and that we gradually reduce the requirements to commercial production and inspection only.

Another commenter observed that we currently do not require mitigations for Medfly beyond standard commercial production and inspection for raspberries imported from other countries with this pest, including Colombia, Costa Rica, El Salvador, France, Guatemala, Honduras, Nicaragua, and Panama. The commenter asked why no additional mitigations exist to prevent Medfly from following the pathway of raspberries imported into the continental United States from these countries and from Ecuador. The commenter stated that raspberries from all production sites in these countries should be inspected and undergo additional mitigation if they have the potential for bringing Medfly to the continental United States.

We respect the concerns of these commenters regarding the potential introduction of Medfly into the continental United States. However, as we noted in the RMD and the proposed rule, Andean blackberries and raspberries have been established in the scientific literature as being poor hosts for both Medfly and Anastrepha fraterculus. We also noted that there has never been an interception of fruit flies from the family Tephritidae, which includes Medfly as well as Anastrepha fraterculus, in any commercial shipments of fresh Andean blackberries or raspberries

from the countries cited by the commenter. For these reasons, APHIS considers standard commercial production and inspection practices to be a sufficient mitigation for Medfly in Andean blackberries and raspberries imported from countries where the pest is present.

We also noted in the proposed rule that a slightly stronger host status potential exists for Anastrepha fraterculus in Andean blackberries and raspberries, and as a result included a requirement for field trapping in order to maintain low pest prevalence for this pest. Furthermore, we added to the proposed rule the requirement that if a single Anastrepha fraterculus, Medfly, or Copitarsia decolora is detected in a consignment, the consignment may not be exported to the United States.

Production Site Requirements

One commenter stated that requiring the production sites of Andean blackberry and raspberry fruit to be free of Anastrepha fraterculus within an area of low prevalence is excessive. The commenter stated that the production sites are over 2,800 meters in altitude with an average temperature of 13 °C, resulting in conditions too adverse for the establishment of Anastrepha fraterculus. The commenter also stated that production centers for Andean blackberries and raspberries are in areas of Ecuador isolated from other fruit crop production. The commenter requested that we remove the requirement that production sites for Andean blackberries and raspberries must be within areas of low prevalence.

We agree with the commenter that given the low temperature and high altitude, the areas in Ecuador in which blackberry and raspberry production sites are located are generally inhospitable to the establishment of Anastrepha fraterculus. However, within Ecuador there is frequent commercial and consumer transport of fruit into these production areas from areas of lower altitude with established populations of Anastrepha fraterculus. Given the risk of

Anastrepha fraterculus moving to production areas via host fruit, we will retain the requirement for trapping at each production site to ensure that the sites are free of Anastrepha fraterculus and remain areas of low pest prevalence. Details of trapping requirements will be included in the operational workplan and can be adjusted if necessary based on the frequency of pest interceptions.

Economic Impacts

One commenter, concerned about potential economic impacts to raspberry and blackberry growers in the United States resulting from imports of Andean raspberry and blackberry from Ecuador, requested that we provide more data on the potential impact to these growers.

In the economic analysis accompanying this rule, we gathered and analyzed data sufficient to determine that this action will not have a significant economic impact on small domestic growers. Between 2008 and 2012, the United States imported 37.22 million pounds of fresh raspberries and between 2011 and 2013 imported 63 million pounds of fresh blackberries. Comparing the volume level of these imports with the proposed maximum level of imports from Ecuador, the Ecuadorian import share would be less than 0.4 percent of the U.S. import share for these fruits.

The same commenter asked what costs APHIS will incur in monitoring and auditing Ecuador's implementation of the systems approach.

APHIS conducts monitoring of production areas and trapping practices, audits of trap records, and other tasks necessary to ensure that the NPPO of Ecuador is implementing the systems approach. The costs of conducting these tasks are included in the APHIS budget.

The commenter also asked if the costs would be feasible for Ecuadorian blackberry and raspberry farmers and whether the regulation imposes burdens on these farmers.

Under Executive Order 12866 and the Regulatory Flexibility Act, we are required to analyze the potential regulatory and economic effects of this action on small entities within the United States. We therefore have not researched the economic effects of this action on Ecuadorian blackberry and raspberry farmers.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The final rule will allow importation into the continental United States of fresh Andean blackberry (Rubus glaucus Benth.) and raspberry (Rubus idaeus L.) fruit from Ecuador. We have information on the total quantity of Andean blackberry and raspberry fruit expected to be imported from Ecuador yearly (less than 180 metric tons (MT)), but not the amount by species. Also, the Andean blackberry is more closely comparable to the loganberry (a blackberry-raspberry hybrid) than it is to the common blackberry (Rubus fruticosus). For these reasons, we

base our analysis on aggregate quantities of Rubus species commercially produced by the United States.

The majority of U.S. raspberry and blackberry farms are in three States – California, Oregon, and Washington. They are classified within the North American Industry Classification System under “Berry except Strawberry Farming” (NAICS 111334). For this industry classification, a business is considered to be a small entity if its annual receipts are not more than \$750,000. The average 2012 market value of crops sold by farms in this category was less than \$135,000. We infer that most fresh raspberry and blackberry fruit production is by small entities.

Over the 5-year period 2008-2012, U.S. raspberry and blackberry production for the fresh market averaged about 96 million pounds and 4 million pounds per year, respectively, for a total of about 100 million pounds, or about 45,372 MT. Expected annual imports from Ecuador of less than 180 MT will be the equivalent of less than 0.4 percent of U.S. production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows fresh Andean blackberry and raspberry fruit to be imported into the continental United States from Ecuador. State and local laws and regulations regarding fresh Andean blackberry and raspberry fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-

case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0435, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take.

E-Government Act Compliance

APHIS is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

Lists of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-75 is added to read as follows:

§ 319.56-75. Andean blackberries and raspberries from Ecuador.

Andean blackberries (Rubus glaucus Benth) and raspberries (Rubus idaeus Linnaeus) may be imported into the continental United States from Ecuador under the conditions described in this section and other applicable provisions of this subpart. These conditions are designed to prevent the introduction of the following quarantine pests: Anastrepha fraterculus, Ceratitis capitata, and Copitarsia decolora.

(a) General requirements. (1) The national plant protection organization (NPPO) of Ecuador must provide an operational workplan to APHIS that details the systems approach to pest mitigations and other specific requirements that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(2) APHIS will be directly involved with the NPPO of Ecuador in monitoring and auditing implementation of the systems approach.

(3) Andean blackberry and raspberry fruit from Ecuador may be imported into the continental United States in commercial consignments only.

(b) Production site requirements. (1) Each production site must carry out the phytosanitary measures specified in the APHIS-approved operational workplan.

(2) All places of production that participate in the export program must be approved by and registered with the NPPO of Ecuador. APHIS reserves the right to conduct oversight visits in the event of pest interceptions or other problems.

(3) The NPPO of Ecuador or their designee must conduct a fruit fly trapping program for the detection of Anastrepha fraterculus at each production site in accordance with the operational workplan. If a designee conducts the program, the designation must be detailed in the

operational workplan. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

(4) The NPPO of Ecuador must maintain records of trap placement, trap checks, and any captures of Anastrepha fraterculus. The trapping records must be maintained for APHIS' review for at least 1 year.

(5) The NPPO of Ecuador must maintain a quality control program, approved by APHIS, to monitor or audit the trapping program in accordance with the operational workplan.

(c) Packinghouse requirements. (1) Packinghouses must be registered with the NPPO of Ecuador and comply with the requirements as specified in the operational workplan.

(2) While in use for exporting Andean blackberries and raspberries to the continental United States, the packinghouses may only accept fruit from registered production sites.

(3) If a single Anastrepha fraterculus, Ceratitis capitata, or Copitarsia decolora is detected by the NPPO in a consignment, the consignment may not be exported to the United States. Furthermore, if a single Anastrepha fraterculus or Ceratitis capitata is detected in a consignment at the port of entry and traced back to a registered production site, that production site will lose its ability to export Andean blackberries and raspberries to the continental United States until APHIS and the NPPO of Ecuador mutually determine that risk mitigation is achieved.

(d) Phytosanitary certificate. Each consignment of Andean blackberries and/or raspberries must be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador

and bear an additional declaration stating that the consignment was produced and prepared for export in accordance with the requirements of § 319.56-75.

(Approved by the Office of Management and Budget under control number 0579-0435)

Done in Washington, DC, this 5th day of April 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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